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09400HB3545ham001

LRB094 03898 BDD 43466 a

1 AMENDMENT TO HOUSE BILL 3545

2 AMENDMENT NO. _____. Amend House Bill 3545 by replacing
3 everything in the enacting clause with the following:

4 "Section 5. The Illinois Income Tax Act is amended by
5 changing Section 1109 as follows:

6 (35 ILCS 5/1109) (from Ch. 120, par. 11-1109)

7 Sec. 1109. Demand and Seizure. In addition to any other
8 remedy provided for by the laws of this State, if the tax
9 imposed by this Act is not paid within the time required by
10 this Act, the Department, or some person designated by it, may
11 cause a demand to be made on the taxpayer for the payment
12 thereof. If such tax remains unpaid for 10 days after such
13 demand has been made and no proceedings have been taken to
14 review the same, the Department may issue a warrant directed to
15 any sheriff or other person authorized to serve process,
16 commanding the sheriff or other person to levy upon the
17 property and rights to property (whether real or personal,
18 tangible or intangible) of the taxpayer, without exemption,
19 found within his jurisdiction, for the payment of the amount
20 thereof with the added penalties, interest and the cost of
21 executing the warrant. The term "levy" includes the power of
22 distraint and seizure by any means. In any case in which the
23 warrant to levy has been issued, the sheriff or other person to
24 whom the warrant was directed may seize and sell such property

1 or rights to property. Such warrant shall be returned to the
2 Department together with the money collected by virtue thereof
3 within the time therein specified, which shall not be less than
4 20 nor more than 90 days from the date of the warrant. The
5 sheriff or other person to whom such warrant is directed shall
6 proceed in the same manner as prescribed by law in respect to
7 the enforcement against property upon judgments by a court, and
8 shall be entitled to the same fees for his services in
9 executing the warrant, to be collected in the same manner. The
10 Department, or some officer, employee or agent designated by
11 it, is hereby authorized to bid for and purchase any property
12 sold under the provisions hereof. No proceedings for a levy
13 under this Section shall be commenced more than 20 years after
14 the latest date for filing of the notice of lien under the
15 provisions of Section 1103, without regard to whether such
16 notice was actually filed.

17 Any officer or employee of the Department designated in
18 writing by the Director is authorized to serve process under
19 this Section to levy upon accounts or other intangible assets
20 of a taxpayer held by a financial organization, as defined in
21 Section 1501 of this Act. In addition to any other provisions
22 of this Section, any officer or employee of the Department
23 designated in writing by the Director may levy upon the
24 following property and rights to property belonging to a
25 taxpayer: contractual payments, accounts and notes receivable
26 and other evidences of debt, and interest on bonds, by serving
27 a notice of levy on the person making such payment. Levy shall
28 not be made until the Department has caused a demand to be made
29 on the taxpayer in the manner provided above. In addition to
30 any other provisions of this Section, any officer or employee
31 of the Department designated in writing by the Director, may
32 levy upon the salary, wages, commissions and bonuses of any
33 employee, including officers, employees, or elected officials
34 of the United States as authorized by Section 5520a of the

1 Government Organization and Employees Act (5 U.S.C. 5520a), but
2 not upon the salary or wages of officers, employees, or elected
3 officials of any state other than this State, by serving a
4 notice of levy on the employer, as defined in Section 701(d).
5 Levy shall not be made until the Department has caused a demand
6 to be made on the employee in the manner provided above. The
7 provisions of Section 12-803 of the Code of Civil Procedure
8 relating to maximum compensation subject to collection under
9 wage deduction orders shall apply to all levies made upon
10 compensation under this Section. To the extent of the amount
11 due on the levy, the employer or other person making payments
12 to the taxpayer shall hold any non-exempt wages or other
13 payments due or which subsequently come due. The levy or
14 balance due thereon is a lien on wages or other payments due at
15 the time of the service of the notice of levy, and such lien
16 shall continue as to subsequent earnings and other payments
17 until the total amount due upon the levy is paid, except that
18 such lien on subsequent earnings or other payments shall
19 terminate sooner if the employment relationship is terminated
20 or if the notice of levy is rescinded or modified. The employer
21 or other person making payments to the taxpayer shall file, on
22 or before the return dates stated in the notice of levy (which
23 shall not be more often than bimonthly) a written answer under
24 oath to interrogatories, setting forth the amount due as wages
25 or other payments to the taxpayer for the payment periods
26 ending immediately prior to the appropriate return date. A lien
27 obtained hereunder shall have priority over any subsequent lien
28 obtained pursuant to Section 12-808 of the Code of Civil
29 Procedure, except that liens for the support of a spouse or
30 dependent children shall have priority over all liens obtained
31 hereunder.

32 A financial institution, employer, or other person
33 properly served with a levy by the Department that fails to
34 timely file an answer or to hold any payment or asset as

1 required under this Section shall be subject to a penalty in
2 the amount equal to \$500 or, in the case of each subsequent
3 failure to timely file an answer or to hold a payment or asset
4 with respect to a levy on the same taxpayer, an amount equal to
5 \$1,000. This penalty shall be in addition to any other right or
6 cause of action of the Department, and shall be deemed assessed
7 at the time the answer was due or the time the payment or asset
8 was required to be held, whichever is earlier, and shall be
9 collected and paid in the same manner as a tax imposed by this
10 Act, provided that this penalty shall not apply if the
11 financial institution, employer, or other person subject to the
12 penalty establishes that the failure to file any answer or hold
13 the payment or asset was due to reasonable cause.

14 In any case where property or rights to property have been
15 seized by an officer of the Illinois Department of State
16 Police, or successor agency thereto, under the authority of a
17 warrant to levy issued by the Department of Revenue, the
18 Department of Revenue may take possession of and may sell such
19 property or rights to property and the Department of Revenue
20 may contract with third persons to conduct sales of such
21 property or rights to the property. In the conduct of such
22 sales, the Department of Revenue shall proceed in the same
23 manner as is prescribed by law for proceeding against property
24 to enforce judgments which are entered by a circuit court of
25 this State. If, in the Department of Revenue's opinion, no
26 offer to purchase at such sale is acceptable and the State's
27 interest would be better served by retaining the property for
28 sale at a later date, then the Department may decline to accept
29 any bid and may retain the property for sale at a later date.

30 (Source: P.A. 89-399, eff. 8-20-95.)

31 Section 10. The Retailers' Occupation Tax Act is amended by
32 changing Section 5f as follows:

1 (35 ILCS 120/5f) (from Ch. 120, par. 444f)

2 Sec. 5f. In addition to any other remedy provided for by
3 the laws of this State, if the tax imposed by this Act is not
4 paid within the time required by this Act, the Department, or
5 some person designated by it, may cause a demand to be made on
6 the taxpayer for the payment of the tax. If the tax remains
7 unpaid for 10 days after demand has been made and no
8 proceedings have been taken for review, the Department may
9 issue a warrant directed to the sheriff of any county of the
10 State or to any State officer authorized to serve process,
11 commanding the sheriff or other officer to levy upon property
12 and rights to property (whether real or personal, tangible or
13 intangible) of the taxpayer, without exemption, found within
14 his or her jurisdiction, for the payment of the amount of
15 unpaid tax with the added penalties, interest and the cost of
16 executing the warrant. The term "levy" includes the power of
17 distraint and seizure by any means. In any case in which the
18 warrant to levy has been issued, the sheriff or other person to
19 whom the warrant was directed may seize and sell such property
20 or rights to property. Such warrant shall be returned to the
21 Department together with the money collected by virtue of the
22 warrant within the time specified in the warrant, which may not
23 be less than 20 nor more than 90 days from the date of the
24 warrant. The sheriff or other officer to whom such warrant is
25 directed shall proceed in the same manner as is prescribed by
26 law for proceeding against property to enforce judgments which
27 are entered by a circuit court of this State, and is entitled
28 to the same fees for his or her services in executing the
29 warrant, to be collected in the same manner. The Department, or
30 some officer, employee or agent designated by it, may bid for
31 and purchase any such property sold.

32 No proceedings for a levy under this Section may be
33 commenced more than 20 years after the latest date for filing
34 of the notice of lien under Section 5b of this Act, without

1 regard to whether such notice was actually filed.

2 Any officer or employee of the Department designated in
3 writing by the Director is authorized to serve process under
4 this Section to levy upon accounts or other intangible assets
5 of a taxpayer held by a financial organization, as defined by
6 Section 1501 of the Illinois Income Tax Act. In addition to any
7 other provisions of this Section, any officer or employee of
8 the Department designated in writing by the Director may levy
9 upon the following property and rights to property belonging to
10 a taxpayer: contractual payments, accounts and notes
11 receivable and other evidences of debt, and interest on bonds,
12 by serving a notice of levy on the person making such payment.
13 Levy shall not be made until the Department has caused a demand
14 to be made on the taxpayer in the manner provided above. In
15 addition to any other provisions of this Section, any officer
16 or employee of the Department designated in writing by the
17 Director, may levy upon the salary, wages, commissions and
18 bonuses of any employee, including officers, employees, or
19 elected officials of the United States as authorized by Section
20 5520a of the Government Organization and Employees Act (5
21 U.S.C. 5520a), but not upon the salary or wages of officers,
22 employees, or elected officials of any state other than this
23 State, by serving a notice of levy on the employer. Levy shall
24 not be made until the Department has caused a demand to be made
25 on the employee in the manner provided above. The provisions of
26 Section 12-803 of the Code of Civil Procedure relating to
27 maximum compensation subject to collection under wage
28 deduction orders shall apply to all levies made upon
29 compensation under this Section. To the extent of the amount
30 due on the levy, the employer or other person making payments
31 to the taxpayer shall hold any non-exempt wages or other
32 payments due or which subsequently come due. The levy or
33 balance due thereon is a lien on wages or other payments due at
34 the time of the service of the notice of levy, and such lien

1 shall continue as to subsequent earnings and other payments
2 until the total amount due upon the levy is paid, except that
3 such lien on subsequent earnings or other payments shall
4 terminate sooner if the employment relationship is terminated
5 or if the notice of levy is rescinded or modified. The employer
6 or other person making payments to the taxpayer shall file, on
7 or before the return dates stated in the notice of levy (which
8 shall not be more often than bimonthly) a written answer under
9 oath to interrogatories, setting forth the amount due as wages
10 or other payments to the taxpayer for the payment periods
11 ending immediately prior to the appropriate return date. A lien
12 obtained hereunder shall have priority over any subsequent lien
13 obtained pursuant to Section 12-808 of the Code of Civil
14 Procedure, except that liens for the support of a spouse or
15 dependent children shall have priority over all liens obtained
16 hereunder.

17 A financial institution, employer, or other person
18 properly served with a levy by the Department that fails to
19 timely file an answer or to hold any payment or asset as
20 required under this Section shall be subject to a penalty in
21 the amount equal to \$500 or, in the case of each subsequent
22 failure to timely file an answer or to hold a payment or asset
23 with respect to a levy on the same taxpayer, an amount equal to
24 \$1,000. This penalty shall be in addition to any other right or
25 cause of action of the Department. The Department shall issue a
26 notice of assessment for such penalty, and the penalty amount
27 shall be collected and paid in the same manner as a tax imposed
28 by this Act, provided that this penalty shall not apply if the
29 financial institution, employer, or other person subject to the
30 penalty establishes that the failure to file any answer or hold
31 the payment or asset was due to reasonable cause.

32 In any case where property or rights to property have been
33 seized by an officer of the Illinois Department of Law
34 Enforcement, or successor agency thereto, under the authority

1 of a warrant to levy issued by the Department of Revenue, the
2 Department of Revenue may take possession of and may sell such
3 property or rights to property and the Department of Revenue
4 may contract with third persons to conduct sales of such
5 property or rights to the property. In the conduct of such
6 sales, the Department of Revenue shall proceed in the same
7 manner as is prescribed by law for proceeding against property
8 to enforce judgments which are entered by a circuit court of
9 this State. If, in the Department's opinion, no offer to
10 purchase at such sale is acceptable and the State's interest
11 would be better served by retaining the property for sale at a
12 later date, then the Department may decline to accept any bid
13 and may retain the property for sale at a later date.

14 (Source: P.A. 89-399, eff. 8-20-95.)

15 Section 99. Effective date. This Act takes effect July 1,
16 2005.".